

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3396 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

STATE BANK OF INDIA

Versus

AHMEDABAD NEW TEXTILKE MILLS

Appearance:

Mr. Roshan Desai, advocate for Petitioner
NOTICE NOT RECD BACK for Respondent No. 1
MR BR GUPTA for Respondent No. 2
NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 25.8.99

CAV JUDGEMENT

This petition has been filed for quashing
the order dated 30th September, 1978 passed in Claim
Petition no.244 of 1977 by the Assistant Commissioner of
Payments and the order dated 18th August, 1980 passed in
Civil Appeal No. 54 of 1978 by the learned Judge, City
Civil Court, Ahmedabad.

2. The respondent no.1 company was declared
a sick undertaking by the Central Government Notification

and it was taken over on 6.9.69 and Authorised Controller was appointed. The petitioner bank claimed the amount of Rs. 87,89,767.94 ps. The Assistant Commissioner of Payments decided the claim of the petitioner and other persons. By the order dated 30th September, 1978, an amount of Rs. 25,94,108.02 ps., was awarded but an amount of Rs. 25,68,986/- out of the awarded amount directed to be credited in the account of the Corporation. The petitioner preferred the aforesaid appeal against the order of the Assistant Commissioner of Payments. The appeal was allowed in part and by an order dated 18.8.80, the amount was modified as Rs. 1,74,450/- to be paid to the petitioner. For the remaining amount the appeal was dismissed. The Authorised Controller could not have been able to conduct the business of the respondent no.1 sick undertaking unless the petitioner would not have invested huge amount on the basis of the execution of the agreement of guarantees executed by the authorised controller and other documents, but the petitioner bank could not get anything.

3. This Court in the case of State Bank of India vs. New Manekchowk Spinning and Weaving Mills Company Ltd., and others (Special Civil Application No. 3395 of 1981 decided today has held that loan means an advance whether of money or in kind on interest made by a money lender and shall include a transaction on a bond bearing interest in respect of post liability when a loan is renewed. It is also held that even liability of a sick textile undertaking prior to 1st April, 1974 shall be the liability of such owner. The authorised controller has undertaken the liability of payment of amount of the Bank-petitioners for the pre-take over period unless that liability is discharged by making payment of loan or in any form with interest the owner/Authorised Controller/NTC, that liability will continue and that liability has to be discharged by them. The owner/Authorised Controller/NTC are also required to discharge the liability of payment for period post nationalisation period. The liability continued till 1.4.74 when the liability was re-affirmed prior to the appointed day i.e. 1.4.74 and that liability continues till the loan advanced with interest is discharged. It is not necessary that the loan should be actually given in cash. If the liability has been credited, that would amount to a liability of loan and that will be considered as loan under the Act and that liability will continue till it is discharged. As such, the entire amount of the bank falls under category 1(a) part I of second schedule of the Act and for that amount, the petitioner bank is entitled.

4. Accordingly, this petition is allowed and the orders passed by both the authorities below are quashed and set aside. The respondent no.2 is directed to pay the entire amount of the petitioner's claim in each account for which the Authorised Controller and other gave guarantee and assurance for the payment within three months from the date of the presentation of the certified copy of this judgment. Rule is made absolute accordingly with no order as to costs.

(Kundan Singh,J)

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